

**U.S. DEPARTMENT OF AGRICULTURE  
WASHINGTON, D.C. 20250**

<b>DEPARTMENTAL REGULATION</b>	<b>NUMBER:</b> 4050-531-002
<b>SUBJECT:</b> Pay Administration – Superior Qualifications and Special Needs Pay Setting Authority	<b>DATE:</b> May 27, 2014
	<b>OPI:</b> Office of Human Resources Management

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**1. PURPOSE**

The purpose of this directive is to set forth the U.S. Department of Agriculture's (USDA) policy on the use of Superior Qualifications Authority (SQA).

**2. SPECIAL INSTRUCTIONS**

This directive provides policies and procedures for requesting and authorizing the use of SQA to a General Schedule (GS) position in accordance with the provisions of Title 5 United States Code (U.S.C.), Section 5333 and the Code of Federal Regulations (CFR), 5 CFR Part 531, Subpart B, 5 CFR 531.212 and Guide to Processing Personnel Actions.

**Supplementation Guidance: Agencies and Staff Offices may not supplement this directive without prior approval of the Director, Office of Human Resources Management (OHRM). Approved supplemental**

**regulations or internal guidance issued by Agencies or Staff Offices may not conflict with the contents of this directive. Agencies and Staff Offices must make this directive, and any approved supplemental regulations or guidance, available to all employees.**

### 3. COVERAGE

This program applies to all USDA employees who are covered by 5 U.S.C. 6301(2). It is not appropriate for Federal agencies to use the SQA to compete with each other.

Comparable authority exists to set advanced in-hire rates for Federal Wage System (FWS) employees. The rules governing these appointments are contained in OPM's Operating Manual for the FWS.

### 4. DEFINITIONS

**Superior Qualifications:** Unusually high, unique or superior qualifications particularly suited to the position in comparison with other qualified candidates. In addition, the candidate would be losing salary and/or benefits if employed at the first step of the grade; and

**Special Need:** A documented need for a specific set of skills and/or expertise and recruitment has met with limited success. An individual who is singularly suited to a unique Departmental function; one who has special though not necessarily superior qualifications that meets the need of a position or a documented area of chronic labor shortage.

### 5. POLICY

Superior qualifications appointments, also known as appointments above the minimum or advanced-in-hire rates, are designed to help agencies compete with the private sector to attract applicants with superior or unique qualifications. Although this is a beneficial and effective authority, SQA is not simply intended to match a candidate's existing rate of pay (current salary or competing job offer); it is a tool to help USDA appoint the best talent. Agencies have a fiscal responsibility to offer the lowest salary necessary to attract a candidate. The rate of pay may not exceed that authorized by regulation (i.e., may not exceed the step 10 of the grade to which the candidate is appointed).

Appointments using SQA are set at a rate that approximates the applicant's existing rate of pay. The rate of pay to be offered may not exceed a candidate's existing pay by more than 20 percent (existing pay to include incentives, consulting pay, or fringe benefits).

A written determination to authorize a rate of pay above the minimum rate of a GS grade (i.e., step 1) or equivalent for the pay band must be requested and approved before the applicant enters on duty in the position to which appointed.

A superior qualifications appointment should only be considered when the candidate otherwise might decline the position. The candidate must first decline a valid job offer at the step 1 of the grade or pay band. The declination of the original job offer must be documented in the file.

Superior qualifications appointments are for journeyman level (e.g., career ladder position is a GS-9-12 with GS-12 as the journeyman/**Full Performance Level**) or senior level positions (e.g. experts, chiefs, etc. usually GS-13-15). Director, OHRM, must approve any request for exceptions.

Superior qualifications appointments may not be made on the basis of the individual's race, color, sex, age, religion, national origin or disabling condition.

## 6. DELEGATION OF AUTHORITY

The authority is hereby delegated to Under Secretaries, Assistant Secretaries, Agency Heads and Staff Office Heads, to administer the use of superior qualifications appointments. Under Secretaries, Assistant Secretaries, Agency Heads and Staff Office Heads may re-delegate this authority to no lower in the organization than their Mission Area Human Resources or Staff Office Director.

At the discretion of the Director, OHRM, or designee, the delegations of authorities made under this directive may be revoked at any time where violations of this and other governing policies are discovered. The delegation of authority will be reinstated by the Director, OHRM, or designee, when the Agency and Staff Office puts the appropriate management controls in place to correct the violation.

## 7. RESPONSIBILITIES

### a. Director, Office of Human Resources Management (OHRM):

- (1) Sets policy and provides overall technical guidance and direction for this directive;
- (2) Provides staff assistance to Under Secretaries, Assistant Secretaries, Agency Heads, Staff Office Heads, and their designees;
- (3) Monitors compliance with Departmental policy; and

- (4) Reports to the Office of Personnel Management (OPM) as required.

b. Under Secretaries, Assistant Secretaries, Agency Heads, and Staff Office Heads:

- (1) Issue written procedures that address how superior qualifications determinations will be made and considered in their individual organizations;
- (2) Ensure that superior qualifications determinations in their organizations are made in accordance with the requirements set forth in this and other governing documents;
- (3) Monitor and assess implementation; and
- (4) Report to OHRM, as requested.
- (5) Agency and Staff Office Heads may re-delegate this authority to their Deputy Administrator for Management and/or their Mission Area Human Resources Director.

8. ELIGIBILITY FOR SUPERIOR QUALIFICATIONS APPOINTMENT

a. Eligibility and 90 Day Rule

To be eligible for an SQA, this must be the first Federal appointment for a prospective employee, or he/she must be returning from break in Federal service of at least 90 consecutive calendar days. Employment with the Government of the District of Columbia which began before Oct. 1, 1987, is considered as Federal service when determining eligibility.

b. Exception to 90 Day Rule

There are certain types of service which do not block the use of the superior qualifications authority regardless of whether they occur immediately before the appointment is made. They are:

- (1) Employment under a time-limited or non-permanent appointment in the competitive or excepted service (excluding Schedule C appointments under 5 CFR 213);
- (2) Employment under an appointment as an expert or consultant under 5 U.S.C. 3109 and 5 CFR part 304;
- (3) Employment under a provisional appointment designated under 5 CFR 316.403; or

- (4) Employment under an Internship Program appointment under 5 CFR 213.3402 (Pathways).

## 9. CRITERIA FOR AUTHORIZING A SUPERIOR QUALIFICATIONS APPOINTMENT

An eligible candidate may be considered for SQA when the candidate (1) has superior qualifications, or (2) meets special need(s) of the agency.

Superior qualifications appointments may be approved for positions at any grade of the General Schedule (or equivalent pay band) in the competitive or excepted service, whether permanent, temporary, full-time, or less than full-time. This applies to positions with regular or special rates.

Even though these hiring actions are referred to as superior qualifications appointments, the authority to make them is solely a pay setting authority. It is not an independent authority to make the actual appointment. To use this authority, there must be an independent source of appointing authority such as being within reach as the result of a valid employment and recruitment process, being eligible for reinstatement, or being eligible under another appropriate hiring authority.

### a. Superior Qualifications

Superior qualifications determination must be based either on the relevance of the candidate's experience and education to the particular work he or she will do, or on the quality of the candidate's accomplishments compared to others in their field. These qualities must be significantly higher than that needed to be minimally qualified for the position and be of a more specialized quality compared to other candidates;

### b. Critical/Special Need

In rare situations, USDA will have a special need for an applicant who would add exceptional value to an agency but who does not meet one or both of the criteria described in this directive (does not have superior qualifications and/or is not giving up or foregoing income to accept the position). In these cases, an appointment above the minimum rate can still be made if it can be demonstrated that the applicant is needed to support an agency's mission or significant project.

However, it is unlikely that an applicant would meet the special need criteria if he/she does not have superior qualifications. In most cases the special need criteria would be used when the applicant is seeking a salary substantially higher (no more than 20%) of existing income or any firm job offers.

### c. Pay Rate Determination

In determining whether a superior qualifications appointment should be authorized, the recommending, reviewing and approving officials must thoroughly consider the potential difficulty that would be encountered of not filling a position with a high quality applicant or in meeting the special agency need. Justification for superior qualifications must be in writing and address one or more of the following as they apply to the request:

- (1) NOTE: Documentation of the consideration of a Recruitment incentive is outlined in Section 12, Relation to Recruitment Incentive.

## 10. DETERMINING THE RATE OF PAY

If the applicant is offered a SQA-based higher rate, an effort should be made by management to maintain equity between the pay of the new appointee and that of current employees doing comparable work within the work unit.

Decision to set pay higher than the first step should be based on the candidate's credentials that are not commonly found in the agency workforce or candidate pool and indicate the selected candidate's competencies clearly exceed those of the other candidates. Decisions to pay above the first step should be based on a variety of factors that include, but are not limited to exceptional or high level work experience, professional licenses, and post-graduate degrees related to the position being filled when compared to others in the field.

The SQA supported rate of pay should ensure that the initial compensation offer is sufficiently competitive to attract the applicant. In determining the pay rate the following factors (as applicable) must be addressed and considered in the justification:

### a. Matching Income

The fact that an individual has superior qualifications by itself is not sufficient to justify an appointment above the minimum. It must be shown that accepting the appointment at the first step of the grade would cause the applicant to forfeit existing income or income which he/she is likely to earn.

### b. Fringe Benefits

Fringe benefits may be considered if they substantially exceed the government's benefits package. It would not be proper to consider fringe benefits that are illegal for the government to provide; for example, transportation to and from work.

### c. Cost of Living

Differences in the cost of living may be considered taking into account the location where the salary was or would be earned and comparing the salary to

payable rates of basic pay in the same location. Salaries which appear to be the same may be significantly different if differences in the cost of living are included.

d. Other Sources of Income

In addition to their primary incomes, applicants may have other sources of income such as consulting fees. When accepting a Federal position, they may have to give these up, perhaps because of conflict of interest provisions or scheduling problems. If it is the Federal employment that will cause applicants to give up these sources of income, that income may be considered when determining the appropriate salary to offer. Income may not be considered if applicants will not have to give it up when accepting the Federal position.

If an applicant can demonstrate a consistent pattern (3 to 5 years) of receiving bonuses or pay increases, these may be factored in when considering the income that would be forfeited.

e. Income from Work on a Less than Full-Time Basis

If an individual does not have a salary but earns income from consulting fees or other work that is less than full-time, agencies should try to examine the pattern of earnings over several (3-5) years. The existence of one big contract should not necessarily be used to calculate the income that the applicant would be giving up. On the other hand, if he/she can show that this level of income is likely to continue, it should be considered. Steady increases in income may also be taken into account.

It is not appropriate to prorate a salary that is earned on a part-time basis.

It is not appropriate for agencies to use the superior qualifications authority to compete with each other. Thus, for example, if an individual has earned their primary income as a Federal consultant under 5 USC 3109, it would not be permissible to use those earnings to justify an appointment above the minimum.

f. Private Sector Offer

There may be situations when an individual has a private sector offer that is substantially higher than his/her recurrent income. In these situations, the job offer may be considered. The private sector job offer must be documented in writing and dated within the past 30 days.

g. No Salary Information

If an applicant is not currently earning a salary commensurate with his/her qualifications and does not have a specific job offer in hand but qualifications indicate that the candidate would command a higher salary, the agency could base

its salary offer on the salary that the applicant could reasonably expect to command. This situation is typical with applicants who have just completed a PhD program or law school and in some instances work for a nonprofit organization. This salary determination should be based on Bureau of Labor Statistics information, salary surveys, and/or current recruitment experiences for similar positions.

h. Other Considerations

- (1) Budget considerations and policies;
- (2) The rates of pay previously authorized in similar situations;
- (3) The desirability of the geographic location, duties, and/or work environment associated with the position; and
- (4) Any other appropriate factor(s)

11. **PROCEDURE FOR REQUESTING APPROVAL OF SQA**

The recommending official (likely the supervisor of the position being filled) will prepare the request for superior qualifications appointment, including the justification and forward it in accordance with this directive and agency policy for consideration and approval. The written request should be initiated as soon as potential use of the incentive is identified and **must be approved before the official offer of employment is made**. Applicants should be advised that the offer is tentative until the request is approved. Requests for setting pay above the minimum level must include the following:

- a. Name of the appointee;
- b. Applicant's resume or other form submitted as application for Federal employment;
- c. A copy of the position description, including the title, series, and grade of the position to which the applicant will be appointed;
- d. List of recruiting sources used along with a description and results of recent recruitment efforts (the Servicing HR Office (HRO) can assist with this information);
- e. Copy of Job Opportunity Announcement/Vacancy Announcement;
- f. Recommended rate above minimum rate;
- g. Written justification for the appointment and rate taking into consideration criteria in sections 9 and 10 and the checklist;



- h. Reasons for authorizing a rate above minimum rate instead of, or in addition to, a recruitment incentive; and
- i. Declination of step 1 offer from employee.

Notification of approval will be sent to the requesting/hiring office and to the Servicing HRO for action.

## 12. RELATION TO RECRUITMENT INCENTIVE

Regulations require that when considering appointments above the minimum rate, agencies must determine whether a recruitment incentive could meet the need instead of appointing at the higher step. In certain situations disparity between the employee's current income and the Federal pay scale is so great that both an appointment above the minimum and a recruitment incentive may be deemed necessary. This is permitted, but it is important to document both actions thoroughly. For information on the Recruitment Incentive please see Department Manual 4050-575-001, Pay Administration – Recruitment, Relocation and Retention Incentives, 7/21/2010.

## 13. DOCUMENTATION

Use of the SQA is monitored by organizations such as OPM and the U.S. Government Accountability Office in addition to USDA's internal oversight. Therefore, it is important that agencies thoroughly document all cases. These records will be maintained for a minimum of two years after the employee's entrance on duty date on the right side of the employees Official Personnel Folder (OPF). These records must include the documentation listed in sections 9, 10 and 12 and the Appendix A. This documentation will be made available for review upon request by OPM, authorized OHRM and agency officials (e.g., as part of Delegated Examining Unit audits, and Human Resources office and program reviews), and will be provided in response to special requests from another oversight organization.

The documentation must be complete and maintained to permit reconstruction of the action. Documentation must include:

- a. The superior qualifications of the individual or special need of the agency that justified use of this authority;
- b. The factors considered in determining the individual's existing pay and, if applicable the reason for setting pay at a rate higher than that needed to match existing pay; and

- c. The reasons for authorizing a higher rate instead of or in addition to a recruitment incentive.

-END-

**Appendix A**  
**Form AD-3077**

# USDA SUPERIOR QUALIFICATIONS CHECKLIST AND SUPPLEMENTAL APPROVAL FORM

This form must be completed and placed on the right side of the OFFICIAL PERSONNEL FOLDER (OPF) of any applicant who is approved for an appointment at an advanced rate under this authority.

<b>Name:</b> (Last, First, M.I.)	<b>Grade and Step Requested</b>
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**OFFICE /POSITION:**

## APPOINTMENT INFORMATION

### 1. The appointing authority?

2. Is authority appropriate? ☐ Yes ☐ No

## QUALIFICATIONS

1. Does the justification memorandum show that the candidate's qualifications are demonstrably superior to what would be expected of a well-qualified candidate and that the employee is forfeiting income?

☐ Yes      ☐ No

**OR**

2. Does the justification memorandum and resume clearly show the candidate has a unique combination of education and/or experience that meets the special needs of the agency? ☐ Yes ☐ No

☐ Yes      ☐ No

### EXISTING PAY/SALARY HISTORY

The justification memorandum includes the following (check all that apply):

☐ Salary      ☐ Fringe Benefits      ☐ Bonuses      ☐ Other Outside Income

☐ Bona Fide Offer (30 days)☐ Avg. Salary for occupation

☐ Forfeited Income

☐ Shortage Category☐ Reasonable expectation of☐ Other☐ Special Need

## Employment

Is all required documentation provided (salary, education, income forfeiture, etc.)? ☐ Yes ☐ No

☐ Complete and signed memorandum from Manager with justification for a superior qualifications appointment

☐ Copy of Position Description

☐ Description of the superior qualifications

☐ Candidate's resume package

☐ All certificates referred to the manager for selection

☐ Income verification (W-2, tax return, check stubs, 1099's, etc.)

**FOR OFFICIAL USE ONLY**

Recommended by: \_\_\_\_\_  
Human Resources Specialist

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*Date*

Concurrence by: \_\_\_\_\_  
(optional) Agency/Staff Office Human Resources Officer

Date \_\_\_\_\_

☐ Approved      Grade/Step Approved: \_\_\_\_\_

☐ Disapproved

Reviewed by: \_\_\_\_\_  
Mission Area Human Resources Director

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*Date*